

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TERRY J. BUTLER,

Plaintiff,

v.

HOWARD L. LEIBRAND, M.D. and
MATTHEW RUSSELL, M.D.,

Defendants.

No. C16-1126RSL

ORDER GRANTING
DEFENDANTS' MOTION TO
DISMISS

This matter comes before the Court on defendants Howard L. Leibrand, M.D., and Matthew Russell, M.D.'s motion to dismiss plaintiff's second amended complaint. Dkt. # 59. Having considered the memoranda of the parties and the remainder of the record in this case, the Court grants defendants' motion for the reasons that follow.

In July 2016, proceeding *pro se*, plaintiff brought this suit for damages, claiming that defendant Leibrand, defendant Russell, a nurse, and the hospital at which they all worked¹ had abused and neglected plaintiff during his January 2016 stay at the hospital. Dkt. # 1-1. Plaintiff

¹ Plaintiff initially named the nurse and the hospital as additional defendants, but he voluntarily dismissed his claims against them in September 2016, leaving only Dr. Leibrand and Dr. Russell as defendants. Dkt. # 20. Plaintiff's second amended complaint again names the nurse and the hospital as defendants; in response, the nurse and the hospital ask the Court to reject the second amended complaint. Dkt. # 54. As a result of the ambiguous nature of plaintiff's complaint, their motion is styled as an opposition to a motion for leave to amend, but given the present posture of this case the Court construes their argument as a motion to dismiss. The Court grants that motion.

1 is an elderly African-American man who suffers from various physical ailments, including
2 “avascular necrosis in both hips,” post-traumatic stress disorder, and “constant” chest pain. Id.
3 at 2. He claims that he was left in a hospital bed “in his own feces, blood and urine” for nine
4 hours, and then denied the opportunity to shower upon his discharge from the hospital. Id.
5 Plaintiff alleges that defendants mistreated him because of his age, race, and disability. Id.

6 On September 16, 2016, plaintiff moved for leave to file an amended complaint on the
7 grounds that he had discovered new defendants and new causes of action. Dkt. # 17. The new
8 allegations appeared to arise out of an earlier stay at the hospital, in July 2014. On October 6,
9 2016, defendants filed this motion to dismiss, arguing that plaintiff’s claims were deficient as a
10 matter of law. Dkt. # 23.

11 On October 25, 2016, the Court denied without prejudice plaintiff’s motion for leave to
12 file an amended complaint on the grounds that plaintiff’s motion failed to meet the requirements
13 of Local Civil Rule 15. Dkt. # 24. The Court directed plaintiff to the local rules and the Federal
14 Rules of Civil Procedure and stated that plaintiff could file a second motion for leave to amend
15 “provided that motion complies with the requirements of LCR 15 and includes as an exhibit a
16 copy of plaintiff’s proposed amended complaint that indicates (through bracketing, striking,
17 underlining, or highlighting . . .) the specific amendments that plaintiff wishes to make to his
18 original complaint.” Id. at 2.

19 Two days later, plaintiff filed a second motion for leave to file an amended complaint.
20 Dkt. # 26. On December 9, 2016, the Court granted defendants’ motion to dismiss plaintiff’s
21 original complaint and denied plaintiff’s second motion for leave to amend, but granted plaintiff
22 another chance to amend his complaint. Dkt. # 33.

23 On December 14, 2016, plaintiff filed a second amended complaint, Dkt. # 37, and
24 shortly afterward filed a series of motions for summary judgment, Dkt. ## 39, 42, 43, 45, 46, 47,
25 53. Responding to these motions, defendants ask the Court to dismiss plaintiff’s second
26 amended complaint. Dkt. # 59. Because plaintiff’s second amended complaint fails to correct
27

1 the deficiencies in plaintiff's original complaint and unsuccessful proposed amended complaints,
2 see Dkt. # 33, the Court grants defendant's motion to dismiss plaintiff's claims. Defendant will
3 not be permitted a fourth opportunity to amend his complaint.

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5 For all the foregoing reasons, plaintiff's motions for summary judgment (Dkt. ## 39, 42)
6 are DENIED. Defendants' motion to dismiss (Dkt. # 59) is GRANTED. The Clerk of Court is
7 directed to enter judgment against plaintiff and in favor of Dr. Leibbrand, Dr. Russell, Ms. Barrie,
8 and Skagit Valley Hospital.

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10 DATED this 24th day of January, 2017.

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13 Robert S. Lasnik
14 United States District Judge
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